



[Billing Code 3290-F8]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2018-0027]

2018 Special 301 Out-of-Cycle Review of Notorious Markets: Comment Request

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests written comments that identify online and physical markets based outside the United States that should be included in the 2018 Notorious Markets List (List). Conducted under the auspices of the Special 301 program, the List identifies online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting. In 2010, USTR began publishing the Notorious Markets List separately from the annual Special 301 Report as an “Out-of-Cycle Review.”

DATES:

October 1, 2018 at midnight EST: Deadline for submission of written comments.

October 15, 2018 at midnight EST: Deadline for submission of rebuttal comments and other information USTR should consider during the review.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal:

[http:// www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments in section III

below. For alternatives to online submissions, please contact USTR at Special301@ustr.eop.gov before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Sung Chang, Director for Innovation and Intellectual Property, at special301@ustr.eop.gov. You can find information about the Special 301 Review, including the Notorious Markets List, at www.ustr.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is concerned with trademark counterfeiting and copyright piracy on a commercial scale because they cause significant financial losses for right holders, legitimate businesses and governments, undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and potentially pose significant risks to consumer health and safety as well as privacy and security. The Notorious Markets List identifies select online and physical marketplaces that reportedly engage in or facilitate substantial copyright piracy and trademark counterfeiting.

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, pursuant to the Administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement, USTR announced that it would publish the List as an Out-of- Cycle Review, separate from the annual Special 301 Report. USTR published the first List in February 2011. USTR develops the annual List based upon public comments solicited through the Federal Register and in consultation with other Federal agencies that serve on the Special 301 Subcommittee of the Trade Policy Staff Committee.

The United States encourages owners and operators of markets reportedly involved in piracy and counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with right holders and enforcement officials to address infringement. USTR also encourages responsible government authorities to intensify their efforts

to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions. The List does not purport to reflect findings of legal violations, nor does it reflect the United States Government's analysis of the general intellectual property (IP) protection and enforcement climate in the country or countries concerned. For an analysis of the IP climate in particular countries, please refer to the annual Special 301 Report, published each spring no later than 30 days after USTR submits the National Trade Estimate to Congress.

II. Public Comments

USTR invites written comments concerning examples of online and physical notorious markets, including foreign trade zones that allegedly facilitate substantial trademark counterfeiting and copyright piracy. To facilitate the review, written comments should be as detailed as possible.

Comments must clearly identify the market and the reasons why the commenter believes that the market should be included in the List. Commenters should include the following information, as applicable:

- If a physical market, the market's name and location, *e.g.*, common name, street address, neighborhood, shopping district, city, etc., and the identity of the principal owners/operators.
- If an online market:
 - The domain name(s) past and present, available registration information, and name(s) and location(s) of the hosting provider(s) and operator(s).
 - Information on the volume of Internet traffic associated with the website, including number of visitors and page views, average time spent on the site, estimate of the number of infringing goods offered, sold, or traded and number of infringing files streamed, shared, seeded, leeches, downloaded, uploaded, or otherwise distributed or reproduced, and global or country popularity rating (*e.g.*, Alexa rank).

- Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising and the methods by which that revenue is collected.
- Whether the market is owned, operated, or otherwise affiliated with a government entity.
- Types of counterfeit or pirated products or services sold, traded, distributed, or otherwise made available at that market.
- Volume of counterfeit or pirated goods or services or other indicia of a market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods or services.
- Estimates of economic harm to right holders resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm.
- Whether the volume of counterfeit or pirated goods or estimates of harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the infringing goods or services sold, traded, distributed, or made available pose a risk to public health or safety.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Additional actions taken by right holders against the market such as takedown notices, requests to sites to remove URLs or infringing content, cease and desist letters, warning letters to landlords and requests to enforce the terms of their leases, requests to providers to enforce their terms of service or terms of use, and the outcome of these actions.
- Additional actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit or pirated goods or services, including policies to

prevent or remove access to such goods or services, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing counterfeiting and piracy, and the level of cooperation with right holders and law enforcement.

- Any other additional information relevant to the review.

III. Submission Instructions

All submissions must be in English and sent electronically via www.regulations.gov. To submit comments, locate the docket (folder) by entering the docket number USTR-2018-0027 in the “Enter Keyword or IP” window at the regulations.gov homepage and click “Search.” The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!” You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name or Organization_2018 Notorious Markets OCR. Please include the following information in the “Type Comment” field: 2018 Out-of-Cycle Review of Notorious Markets. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the “Type Comment” field. For further information on using the www.regulations.gov website, please select “How to Use Regulations.gov” on the bottom of any page.

Please do not attach separate cover letters to electronic submissions. Instead, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comment submitted electronically that contains business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Additionally, the submitter should type “Business Confidential 2018 Out-of- Cycle Review of Notorious Markets” in the “Comment” field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The non-business confidential version will be placed in the docket at www.regulations.gov and be available for public inspection.

As noted, USTR strongly urges submitters to file comments through www.regulations.gov. You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting USTR at *Special301@ustr.eop.gov*.

We will post comments in the docket for public inspection, except business confidential information. You can view comments on the [https:// www.regulations.gov](https://www.regulations.gov) Web site by entering docket number USTR-2018-0027 in the search field on the home page.

Daniel Lee,

*Assistant U.S. Trade Representative for Innovation and Intellectual Property (Acting),
Office of the United States Trade Representative.*

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